

Client Alert

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Voluntary Secondary Market Disclosure About Bank Loans

Recently, a Task Force made up of representatives of the American Bankers Association, the Bond Dealers of America, GFOA, the Investment Company Institute, the National Association of Bond Lawyers, the National Federation of Municipal Analysts, the Security Industry and Financial Market Association and several others released a report entitled “*Considerations Regarding Voluntary Secondary Market Disclosure About Bank Loans.*” The paper provides assistance to issuers and their financial advisors and legal counsel in determining whether to disclose the incurrence of debt in the form of bank loans (sometimes referred to as non-bank qualified bonds) on the Electronic Municipal Market Access (EMMA) website maintained by the Municipal Securities Rulemaking Board (the MSRB), where issuers and borrowers file certain documents under SEC Rule 15c2-12 (the “Rule”). Generally, only publicly offered transactions are covered by the Rule. While the EMMA site permits voluntary filings, many issuers and borrowers have chosen not to file information that is not specifically required to be filed under the Rule or under the continuing disclosure undertakings. In April 2012, the MSRB published *Notice 2012-18* in which it encouraged issuers to voluntarily post information about bank loans on EMMA. The Task Force includes a number of groups of municipal analysts and buyers who are interested in further encouraging voluntary filing of information regarding these transactions on EMMA.

Notably, the paper does not call for a change in the Rule to mandate disclosure of these bank transactions. The paper describes factors that should be considered by issuers and borrowers in determining whether they should voluntarily disclose information about these transactions. If a decision is made to make a voluntary disclosure, the paper suggests that either the actual loan document or a summary of the material terms of the agreement be filed on EMMA.

Given the increase in these non-publicly offered transactions over the last several years, especially for healthcare and non-profit borrowers, it is not surprising that analysts and buyers are encouraging issuers and borrowers to make these voluntary filings on EMMA. Otherwise access to information regarding these debt transactions is unavailable to the market, at least until audited financial statements disclosing the additional debt are available. Issuers and borrowers, however, must balance the need to provide material information to the market on a timely basis against the risk of inadvertent misstatements in such disclosures, as well as the risk that disclosing material covenants and agreements in these non-public transactions may impact their ability to negotiate the terms of future

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transactions. Depending on the success of these efforts to promote voluntary filings, some municipal analysts and buyers may encourage the MSRB to modify the Rule to mandate these disclosures.

In the event that you would like to receive a copy of this paper, or you have any questions regarding the disclosure of these transactions or the content of such a voluntary disclosure, please feel free to give us a call.

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